

AMENDED IN SENATE APRIL 10, 1997

**SENATE BILL**

**No. 612**

**Introduced by Senator Costa**

February 25, 1997

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~~An act to amend Sections 7403, 7651, 7652, 7653, 7659.2, 7701, 7704, 7713, 7728, 7729, 7730, 7851, 7852, 7853, 7855, 7881, 7883, 7891, 7893, 7895, 7982, 8102, 8103, 8104, 8105, 8126, 8127, 8128, 8148, 8149, 8171, 8191, 8251, 8255, 8272, 8351, 60201.2, 60201.3, 60501, and 60510 of, to amend and renumber the heading of Article 6 (commencing with Section 7956) of, and the heading of Article 7 (commencing with Section 7982) of, Chapter 6 of Part 2 of Division 2 of, to add Sections 7509, 7510, 7856, 7960, 7983, 8271, and 60526 to, to repeal Sections 7658.5, 7715, 7716, 7862, and 7894 of, to repeal Article 4 (commencing with Section 7916) of, and Article 5 (commencing with Section 7931) of, Chapter 6 of Part 2 of Division 2 of, and to repeal and add Sections 7861, 7956, 7957, and 7959 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Sections 8102, 8103, 8105, 60041, 60201.2, 60201.3, 60472, 60501, 60502, 60505, and 60511 of, to add Sections 8108 and 8109 to, and to repeal Sections 7402, 7403, 7404, 7407, and 60510 of, the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 612, as amended, Costa. Fuel taxes.

~~The Motor Vehicle Fuel License Tax Law provides, among other things, that specified payments be made to the Controller, specified collections be made by the Controller~~

~~and the Attorney General, that jeopardy determinations be filed with the Controller, that, at the request of the Controller, the Attorney General commence and prosecute actions at law, that the Attorney General bring specified suits, that the Controller has specified collection responsibilities, and that the Controller take specified actions and have specified duties in connection with overpayments and refunds.~~

~~This bill would, under that law, transfer those duties and responsibilities from the Controller, or the Attorney General, as applicable, to the State Board of Equalization. This bill would also revise and recast specified provisions under that law relating to, among other things, export certificates, revocations of licenses, relief from interest, deposits of payments, notices of determinations, notices of levy, security for payment, bids at specified auction sales, collections of tax from deposited security, sales of state-acquired property, payments on terminations of business, partnership registrations, specified time for payments, refunds generally and refunds specifically relating to exportation of fuel from this state, claims for refund, and suits for refund. This bill would add provisions relating to the administration and settlements of civil tax matters, as provided, under the Motor Vehicle Fuel License Tax Law.~~

*The Motor Vehicle Fuel License Tax Law provides, among other things, that specified export certificates shall be executed and filed in support of specified exemptions from the license taxes imposed. That law also provides specified procedures regarding overpayments and refunds.*

*This bill would delete the provisions relating to export certificates. It would make specified changes relating to the amounts required to be withheld, claims for refunds, payments on the claims, and the payment of interest on refunds, as provided.*

The Diesel Fuel Tax Law provides, until January 1, 1998, that a purchaser of diesel fuel from a supplier may elect to remit the fuel tax to the supplier on terms agreed upon between the purchaser and supplier, as provided.

This bill would delete the January 1, 1998, date ~~and the requirement relating to terms agreed upon between the purchaser and supplier.~~

The Diesel Fuel Tax Law provides, until January 1, 1998, that with respect to specified worthless accounts, a supplier is relieved from liability for diesel fuel tax, as provided.

~~This bill would delete the January 1, 1998, date, and provide specified similar relief from diesel fuel tax liability with respect to an ultimate vendor, as provided.~~

The Diesel Fuel Tax Law provides that a specified claim for refund with respect to diesel fuel is allowed only if certain conditions apply.

This bill would also apply those refund provisions to diesel fuel that is sold by any person to a train operator, as provided, *to diesel fuel that is lost, as specified, and to diesel fuel for which no original purchase invoice was created, but for which a proper electronic invoice is provided.*

The Diesel Fuel Tax Law ~~requires~~ *provides* that *no* refunds of taxes *shall* be granted for losses in handling, transporting, or storing diesel fuel.

~~This bill would specify that these refunds shall be made in accordance with the terms, conditions, and forms prescribed by the State Board of Equalization.~~

~~This bill would also specify the form for a claim for refund and time for payment on the claim repeal those provisions.~~

~~This bill would take effect immediately as a tax levy.~~

*The Diesel Fuel Tax Law provides that if a purchaser of a business or stock of goods fails to withhold certain purchase amounts and becomes liable for those amounts, the purchaser is relieved of that liability if the State Board of Equalization fails to mail a specified notice within a prescribed period of time.*

*This bill would modify that prescribed period of time.*

*The Diesel Fuel Tax Law allows interest to be paid on refunds from the last day of the month following the day the diesel fuel was purchased.*

*This bill would allow that interest from the first day of the calendar month following the day a properly completed claim for refund is received, as specified.*

Vote:  $\frac{2}{3}$  majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 7403 of the Revenue and Taxation Code is amended to read:~~

~~7403. All export certificates required to be filed with the board under Section 7402 shall be completed and be filed with the board within two years after the close of the calendar month in which the fuel is exported. Failure to file the certificate within the time required shall not preclude the distributor from filing a claim for refund under Article 2 (commencing at Section 8126), Chapter 7, of this part with respect to the tax paid by the distributor on motor vehicle fuel which has been exported.~~

~~SEC. 2. Section 7509 is added to the Revenue and Taxation Code, to read:~~

~~7509. Subsequent to the revocation of the license of a person, the board shall reinstate the permit when the person pays the amount of tax determined, together with interest and penalties, fully complies with this part, and pays a fee of fifty dollars (\$50) to the board for reinstatement. The fee shall not be subject to refund except as provided in Section 8126.~~

~~SEC. 3. Section 7510 is added to the Revenue and Taxation Code, to read:~~

~~7510. It is unlawful for any person to operate in this state after a license has been revoked.~~

~~SEC. 4. Section 7651 of the Revenue and Taxation Code is amended to read:~~

~~7651. Each distributor shall prepare and file with the board on forms prescribed by the board a return showing the total number of gallons of motor vehicle fuel distributed by him within this state during each calendar month, or such monthly period ended during that calendar month as the board may authorize, the amount of license tax due for the month covered by the return, and such other information as the board deems necessary for the proper administration of this part. The distributor shall file the return on or before the 25th day of the calendar month following the monthly period to which it~~

1 ~~relates, together with a remittance payable to the board~~  
2 ~~for the amount of license tax due for that period less~~  
3 ~~whatever amounts may have been paid theretofore for~~  
4 ~~the same period because of returns and payments made~~  
5 ~~on a weekly basis.~~

6 ~~SEC. 5. Section 7652 of the Revenue and Taxation~~  
7 ~~Code is amended to read:~~

8 ~~7652. Each producer and broker shall file a return in~~  
9 ~~such form as may be prescribed by the board for each~~  
10 ~~calendar month. The return shall be filed with the board~~  
11 ~~on or before the 25th day of the calendar month following~~  
12 ~~the close of the monthly period to which it relates,~~  
13 ~~together with a remittance payable to the board of the~~  
14 ~~amount of tax, if any, due under Sections 7356 and 7357~~  
15 ~~for that period. To facilitate the administration of this part~~  
16 ~~the board may require the filing of such returns for other~~  
17 ~~than monthly periods. All provisions of this part relating~~  
18 ~~to collection of tax from distributors shall be applicable to~~  
19 ~~the tax payable by brokers and producers.~~

20 ~~SEC. 6. Section 7653 of the Revenue and Taxation~~  
21 ~~Code is amended to read:~~

22 ~~7653. Each person subject to the tax imposed under~~  
23 ~~Section 7351.5, within one month following the date of~~  
24 ~~imposition of the tax, shall prepare and file with the~~  
25 ~~board, on forms prescribed by the board, a return~~  
26 ~~showing the total number of gallons of motor vehicle fuel~~  
27 ~~owned by the person on the date of imposition of the tax~~  
28 ~~for which a license tax has been imposed under Section~~  
29 ~~7351, the amount of the license tax imposed, and any~~  
30 ~~other information that the board deems necessary for the~~  
31 ~~proper administration of this part.~~

32 ~~The return shall be accompanied by a remittance~~  
33 ~~payable to the board in the amount of tax due.~~

34 ~~SEC. 7. Section 7658.5 of the Revenue and Taxation~~  
35 ~~Code is repealed.~~

36 ~~SEC. 8. Section 7659.2 of the Revenue and Taxation~~  
37 ~~Code is amended to read:~~

38 ~~7659.2. Each prepayment shall be accompanied by a~~  
39 ~~report of the amount of that prepayment in a form~~  
40 ~~prescribed by the board and shall be filed with the board~~

~~on or before the 15th day following each monthly period together with a remittance payable to the board of the amount due.~~

~~SEC. 9. Section 7701 of the Revenue and Taxation Code is amended to read:~~

~~7701. If the board deems such procedure necessary in order to insure payment to the State of the amount of license taxes due from any distributor under this part, it may require him to make returns and payments of his license taxes on a weekly basis. The distributor must then file a return each Tuesday showing the total number of gallons of motor vehicle fuel distributed by him during the week ending the Saturday next preceeding, the amount of tax due for that week and such other information as the board deems necessary for the proper administration of this article. The return shall be accompanied by a remittance payable to the board for the amount of license tax due for the period covered.~~

~~SEC. 10. Section 7704 of the Revenue and Taxation Code is amended to read:~~

~~7704. If a distributor fails to make his weekly return or to pay any weekly installment of the license tax, or any part thereof, pursuant to the requirement imposed upon him under Section 7701, the full amount of the installment becomes immediately due and payable. The board shall thereupon make a jeopardy determination under Section 7698 and shall forthwith collect the license tax due from the distributor in the manner prescribed by Chapters 5 and 6 of this part. All provisions of those chapters, where relevant, apply to collections required to be made under this article.~~

~~SEC. 11. Section 7713 of the Revenue and Taxation Code is amended to read:~~

~~7713. All determinations made by the board under this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 per cent of the amount of the determination, exclusive of interest and penalties, shall be added thereto. Payment shall be made in the form of a remittance payable to the board and shall be filed with the board~~

1 together with a copy of the notice of determination which  
2 the board shall furnish to the distributor for that purpose.

3 SEC. 12. Section 7715 of the Revenue and Taxation  
4 Code is repealed.

5 SEC. 13. Section 7716 of the Revenue and Taxation  
6 Code is repealed.

7 SEC. 14. Section 7728 of the Revenue and Taxation  
8 Code is amended to read:

9 7728. The board shall forthwith collect the license tax,  
10 penalty and interest due from the unlicensed distributor  
11 by seizure and sale of property in the manner prescribed  
12 for the collection of a delinquent monthly license tax.

13 SEC. 15. Section 7729 of the Revenue and Taxation  
14 Code is amended to read:

15 7729. At the request of the board the Attorney  
16 General shall commence and prosecute to final  
17 determination an action at law to collect the license tax,  
18 penalty and interest, or any part thereof, determined  
19 against an unlicensed distributor.

20 SEC. 16. Section 7730 of the Revenue and Taxation  
21 Code is amended to read:

22 7730. In the suit a copy of the jeopardy determination  
23 certified by the board, shall be prima facie evidence that  
24 the unlicensed distributor is indebted to the State in the  
25 amount of the license tax, penalties and interest  
26 computed as prescribed by Section 7706.

27 SEC. 17. Section 7851 of the Revenue and Taxation  
28 Code is amended to read:

29 7851. If any distributor is delinquent in the payment  
30 of his license tax, or in the event a determination has been  
31 made against him which remains unpaid, the board may,  
32 not later than 10 years after the payment became  
33 delinquent, or within 10 years after the last recording or  
34 filing of a notice of state tax lien under Section 7171 of the  
35 Government Code, give notice thereof personally or by  
36 first-class mail to all persons, including any officer or  
37 department of the state or any political subdivision or  
38 agency of the state, having in their possession or under  
39 their control any credits or other personal property  
40 belonging to the distributor, or owing any debts to the

~~distributor. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.~~

~~SEC. 18. Section 7852 of the Revenue and Taxation Code is amended to read:~~

~~7852. After receiving the notice the persons so notified shall neither transfer nor make other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.~~

~~SEC. 19. Section 7853 of the Revenue and Taxation Code is amended to read:~~

~~7853. All persons so notified shall forthwith after receipt of the notice advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.~~

~~SEC. 20. Section 7855 of the Revenue and Taxation Code is amended to read:~~

~~7855. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or personal property belonging to a distributor or other person liable for any amount under this part to withhold from these credits or other personal property the amount~~



1 of any tax, interest, or penalties due from the distributor  
2 or other person, or the amount of any liability incurred by  
3 them under this part, and to transmit the amount  
4 withheld to the board at the time it may designate.

5 (b) In the case of a financial institution, to be effective,  
6 the notice shall state the amount due from the taxpayer  
7 and shall be delivered or mailed to the branch office of the  
8 financial institution where the credits or other property  
9 is held, unless another branch or office is designated by  
10 the financial institution to receive the notice.

11 (c) The person served shall continue to withhold  
12 pursuant to the notice of levy until the amount specified  
13 in the notice, including accrued interest, has been paid in  
14 full, until the notice is withdrawn, or until one year from  
15 the date the notice is received, whichever occurs first.

16 (d) The amount required to be withheld is the lesser  
17 of the following:

18 (1) The amount due stated on the notice.

19 (2) The amount of each payment due or becoming due  
20 to the distributor or other person liable during the period  
21 of the levy

22 (e) For the purposes of this section, the term  
23 “payments” does not include earnings as that term is  
24 defined in subdivision (a) of Section 706.011 of the Code  
25 of Civil Procedure or funds in a deposit account as defined  
26 in Section 9105 of the Commercial Code. The term  
27 “payments” does include any of the following:

28 (1) Payments due for services of independent  
29 contractors, dividends, rents, royalties, residuals, patent  
30 rights, mineral, or other natural rights.

31 (2) Payments or credits due or becoming due  
32 periodically as a result of an enforceable obligation to the  
33 distributor or other person liable for the tax.

34 (3) Any other payments or credits due or becoming  
35 due to the distributor or other person liable as the result  
36 of written or oral contracts for services or sales whether  
37 denominated as wages, salary, commission, bonus, or  
38 otherwise.

39 SEC. 21. Section 7856 is added to the Revenue and  
40 Taxation Code, to read:

~~7856. If, at the time a person ceases to be a distributor under this part, the board holds security pursuant to Section 7486 in the form of cash, or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the person ceases to be a distributor under this part.~~

~~SEC. 22. Section 7861 of the Revenue and Taxation Code is repealed.~~

~~SEC. 22.5. Section 7861 is added to the Revenue and Taxation Code, to read:~~

~~7861. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the filing of a notice of state tax lien under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the state to collect the amount delinquent together with penalties and interest.~~

~~SEC. 23. Section 7862 of the Revenue and Taxation Code is repealed.~~

~~SEC. 24. Section 7881 of the Revenue and Taxation Code is amended to read:~~

~~7881. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part.~~

~~SEC. 25. Section 7883 of the Revenue and Taxation Code is amended to read:~~

~~7883. The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services~~

1 pursuant to a writ of execution. The board, and not the  
2 court, shall approve the fees for publication in a  
3 newspaper.

4 SEC. 26. Section 7891 of the Revenue and Taxation  
5 Code is amended to read:

6 7891. Whenever any distributor is delinquent in the  
7 payment of the license tax, the board or its authorized  
8 representative may forthwith seize any property, real or  
9 personal, of the distributor, and thereafter sell the  
10 property, or a sufficient part of it, at public auction to pay  
11 the license tax due together with any penalties, interest  
12 and any costs incurred on account of the seizure and sale.

13 SEC. 27. Section 7893 of the Revenue and Taxation  
14 Code is amended to read:

15 7893. At the sale the board or its authorized agent  
16 shall sell the property in accordance with law and the  
17 notice and shall deliver to the purchaser a bill of sale for  
18 the personal property and a deed for any real property  
19 sold. The bill of sale or deed vests title in the purchaser.  
20 The unsold portion of any property seized may be left at  
21 the place of sale at the risk of the distributor.

22 SEC. 28. Section 7894 of the Revenue and Taxation  
23 Code is repealed.

24 SEC. 29. Section 7895 of the Revenue and Taxation  
25 Code is amended to read:

26 7895. If upon the sale the moneys received exceed the  
27 amount of all license taxes, penalties, interest, and costs  
28 due the state from the distributor, the board shall return  
29 the excess to the distributor and obtain his or her receipt.  
30 If any person having an interest in or lien upon the  
31 property files with the board prior to the sale notice of his  
32 or her interest or lien, the board shall withhold payment  
33 of any excess pending a determination of the rights of the  
34 respective parties to the excess moneys by a court of  
35 competent jurisdiction. If for any reason the receipt of the  
36 distributor is not available, the Controller shall deposit  
37 the excess moneys in an unclaimed property account, in  
38 trust for the distributor, subject to the order of the  
39 distributor, his or her heirs, successors, or assigns.

1 ~~SEC. 30. Article 4 (commencing with Section 7916) of~~  
2 ~~Chapter 6 of Part 2 of Division 2 of the Revenue and~~  
3 ~~Taxation Code is repealed.~~

4 ~~SEC. 30.5. Article 5 (commencing with Section 7931)~~  
5 ~~of Chapter 6 of Part 2 of Division 2 of the Revenue and~~  
6 ~~Taxation Code is repealed.~~

7 ~~SEC. 31. The heading of Article 6 (commencing with~~  
8 ~~Section 7956) of Chapter 6 of Part 2 of Division 2 of the~~  
9 ~~Revenue and Taxation Code is amended and~~  
10 ~~renumbered to read:~~

11  
12 ~~Article 4. Payment on Termination of Business~~  
13

14 ~~SEC. 32. Section 7956 of the Revenue and Taxation~~  
15 ~~Code is repealed.~~

16 ~~SEC. 32.5. Section 7956 is added to the Revenue and~~  
17 ~~Taxation Code, to read:~~

18 ~~7956. If any distributor liable for any amount under~~  
19 ~~this part sells out his or her business or stock of goods or~~  
20 ~~quits the business, his or her successor or assign shall~~  
21 ~~withhold from the purchase price an amount sufficient to~~  
22 ~~cover that amount until the former owner produces a~~  
23 ~~receipt from the board showing that it has been paid or~~  
24 ~~a certificate stating that no amount is due.~~

25 ~~SEC. 33. Section 7957 of the Revenue and Taxation~~  
26 ~~Code is repealed.~~

27 ~~SEC. 33.5. Section 7957 is added to the Revenue and~~  
28 ~~Taxation Code, to read:~~

29 ~~7957. (a) If the purchaser of a business or stock of~~  
30 ~~goods fails to withhold the purchase price as required, he~~  
31 ~~or she becomes personally liable for the payment of the~~  
32 ~~amount required to be withheld by him or her to the~~  
33 ~~extent of the purchase price valued in money.~~

34 ~~(b) (1) Within 60 days after the latest of the dates~~  
35 ~~specified in paragraph (2), the board shall either issue the~~  
36 ~~certificate or mail notice to the purchaser at his or her~~  
37 ~~address as it appears on the records of the board of the~~  
38 ~~amount that is required to be paid as a condition of issuing~~  
39 ~~the certificate.~~

~~(2) For purposes of paragraph (1), the latest of the following dates shall apply:~~

~~(A) The date the board receives a written request from the purchaser for a certificate.~~

~~(B) The date the former owner's records are made available for audit.~~

~~(c) Failure of the board to mail the notice referred to in subdivision (b) shall release the purchaser from any further obligation to withhold the purchase price under this article. The time within which the obligation of the successor may be enforced shall begin to run at the time the person sells out his or her business or stock of goods or at the time that the determination against the person becomes final.~~

~~SEC. 34. Section 7959 of the Revenue and Taxation Code is repealed.~~

~~SEC. 34.5. Section 7959 is added to the Revenue and Taxation Code, to read:~~

~~7959. The certificate may be issued after the payment of all amount due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amount is secured to the satisfaction of the board.~~

~~SEC. 35. Section 7960 is added to the Revenue and Taxation Code, to read:~~

~~7960. The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 3.5 (commencing with Section 7710) of Chapter 5. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. This chapter, with respect to the collection of any amount required to be paid under this part, shall apply when the notice becomes final.~~

1 ~~SEC. 36. The heading of Article 7 (commencing with~~  
2 ~~Section 7982) of Chapter 6 of Part 2 of Division 2 of the~~  
3 ~~Revenue and Taxation Code is amended and~~  
4 ~~renumbered to read:~~

5  
6 ~~Article 5. Miscellaneous Provisions~~  
7

8 ~~SEC. 37. Section 7982 of the Revenue and Taxation~~  
9 ~~Code is amended and renumbered to read:~~

10 ~~7982. The remedies of the State provided for in this~~  
11 ~~chapter are cumulative, and no action taken by the board~~  
12 ~~or the Attorney General constitutes an election by the~~  
13 ~~State to pursue any remedy to the exclusion of any other~~  
14 ~~remedy for which provision is made in this part.~~

15 ~~SEC. 38. Section 7983 is added to the Revenue and~~  
16 ~~Taxation Code, to read:~~

17 ~~7983. The board shall not be subject to subdivisions~~  
18 ~~(e) and (d) of Section 16307 of the Corporations Code~~  
19 ~~unless, at the time of application for or issuance of a~~  
20 ~~permit, license, or registration number under this part~~  
21 ~~the applicant furnishes to the board a written partnership~~  
22 ~~agreement that provides that all business assets shall be~~  
23 ~~held in the name of the partnership.~~

24 ~~SEC. 39. Section 8102 of the Revenue and Taxation~~  
25 ~~Code is amended to read:~~

26 ~~8102. The claimant of a refund shall present to the~~  
27 ~~board a claim supported by the original invoice showing~~  
28 ~~the purchase. The claim shall state the total amount of the~~  
29 ~~fuel purchased by the claimant and the manner and the~~  
30 ~~equipment in which the claimant has used the fuel. The~~  
31 ~~claim shall not be under oath but shall contain, or be~~  
32 ~~accompanied by, a written declaration that it is made~~  
33 ~~under the penalties of perjury.~~

34 ~~SEC. 40. Section 8103 of the Revenue and Taxation~~  
35 ~~Code is amended to read:~~

36 ~~8103. The board, upon the presentation of the claim~~  
37 ~~and the invoice, shall cause to be paid to the claimant~~  
38 ~~within 20 days of receipt of the claim by the board from~~  
39 ~~the license taxes collected under this part an amount~~  
40 ~~equal to the license taxes collected on the motor vehicle~~

1 ~~fuel in respect to which the refund is claimed under this~~  
2 ~~article.~~

3 ~~SEC. 41. Section 8104 of the Revenue and Taxation~~  
4 ~~Code is amended to read:~~

5 ~~8104. In order to establish the validity of any claim the~~  
6 ~~board may, upon demand, examine the books and records~~  
7 ~~of the claimant for such purpose. The failure of the~~  
8 ~~claimant to accede to such demand constitutes a waiver~~  
9 ~~of all right to the refund claimed on account of the~~  
10 ~~transactions questioned.~~

11 ~~SEC. 42. Section 8105 of the Revenue and Taxation~~  
12 ~~Code is amended to read:~~

13 ~~8105. All applications for refund under Section 8101~~  
14 ~~based upon exportation of motor vehicle fuel from this~~  
15 ~~state shall be filed with the board within three years from~~  
16 ~~the date of the purchase of the fuel. All other applications~~  
17 ~~for refund provided under this article, except where an~~  
18 ~~extension of time has been granted, shall be filed within~~  
19 ~~three years from the date of the purchase of the motor~~  
20 ~~vehicle fuel. Any application filed after the time~~  
21 ~~prescribed shall not be considered by the board, the~~  
22 ~~Treasurer, or the state.~~

23 ~~SEC. 43. Section 8126 of the Revenue and Taxation~~  
24 ~~Code is amended to read:~~

25 ~~8126. If the board determines that any amount not~~  
26 ~~required to be paid under this part has been paid by any~~  
27 ~~person who is a licensed distributor, broker, producer, or~~  
28 ~~aircraft jet fuel dealer, the board shall set forth that fact~~  
29 ~~in its records and certify the amount collected in excess~~  
30 ~~of the amount legally due and the person from whom it~~  
31 ~~was collected. Any proposed determination by the board~~  
32 ~~pursuant to this section with respect to an amount in~~  
33 ~~excess of fifty thousand dollars (\$50,000) shall be available~~  
34 ~~as a public record for at least 10 days prior to the effective~~  
35 ~~date of that determination.~~

36 ~~SEC. 44. Section 8127 of the Revenue and Taxation~~  
37 ~~Code is amended to read:~~

38 ~~8127. The board shall thereupon credit the excess on~~  
39 ~~any amounts then due from the person under this part~~

1 and refund the balance to the person or his successors,  
2 administrators, executors, or assigns.

3 SEC. 45. Section 8128 of the Revenue and Taxation  
4 Code is amended to read:

5 8128. (a) Except as provided in subdivision (b), no  
6 refund under Section 8126 shall be approved by the board  
7 after three years from the 25th day of the calendar month  
8 following the month for which the overpayment was  
9 made, or with respect to determinations made under  
10 Article 2 (commencing with Section 7660), Article 2.5  
11 (commencing with 7670), or Article 3 (commencing with  
12 Section 7698) of Chapter 5, after six months from the  
13 dates the determinations become final, or after six  
14 months from the date of overpayment, whichever period  
15 expires the later, unless a claim therefor is filed with the  
16 board within such period. No credit shall be approved by  
17 the board after the expiration of such period unless a  
18 claim for credit is filed with the board within such period,  
19 or unless the credit relates to a period for which a waiver  
20 is given pursuant to Section 7676.

21 (b) A refund may be approved by the board for any  
22 period for which a waiver is given under Section 7676 if  
23 a claim therefor is filed with the board before the  
24 expiration of the period agreed upon.

25 SEC. 46. Section 8148 of the Revenue and Taxation  
26 Code is amended to read:

27 8148. Within 90 days after the mailing of the notice of  
28 action upon a claim for refund or credit, the claimant may  
29 bring an action against the board on the grounds set forth  
30 in the claim in a court of competent jurisdiction in the  
31 County of Sacramento for the recovery of the whole or  
32 any part of the amount with respect to which the claim  
33 has been disallowed.

34 SEC. 47. Section 8149 of the Revenue and Taxation  
35 Code is amended to read:

36 8149. If the board fails to mail notice of action on a  
37 claim within six months after the claim is filed, the  
38 claimant may, prior to the mailing of notice, consider the  
39 claim disallowed and bring an action against the board on



~~the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed.~~

~~SEC. 48. Section 8171 of the Revenue and Taxation Code is amended to read:~~

~~8171. (a) The board may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.~~

~~(b) As an alternative to subdivision (a) in recovering any erroneous refunds or credits, the board, in its discretion, may issue a deficiency determination in accordance with Article 2.5 (commencing with Section 7670) or Article 3 (commencing with Section 7698) of Chapter 5. Except in the case of fraud, the determination shall be made within three years from the last day of the month following the reporting period in which the board certifies that the amount collected was in excess of the amount legally due.~~

~~SEC. 49. Section 8191 of the Revenue and Taxation Code is amended to read:~~

~~8191. If the board determines that any amount has been illegally determined to be due from any person either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.~~

~~SEC. 50. Section 8251 of the Revenue and Taxation Code is amended to read:~~

~~8251. The board shall enforce the provisions of this part, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the~~

1 ~~extent to which any ruling or regulation shall be applied~~  
2 ~~without retroactive effect.~~

3 ~~SEC. 51. Section 8255 of the Revenue and Taxation~~  
4 ~~Code is amended to read:~~

5 ~~8255. Upon request from the officials to whom is~~  
6 ~~entrusted the enforcement of the motor fuel tax law of~~  
7 ~~another government, the board may furnish to those~~  
8 ~~officials any information in the possession of the board~~  
9 ~~that is deemed essential to the enforcement of the motor~~  
10 ~~fuel tax laws.~~

11 ~~Any information so furnished shall not be used for any~~  
12 ~~purpose other than that for which it was furnished.~~

13 ~~SEC. 52. Section 8271 is added to the Revenue and~~  
14 ~~Taxation Code, to read:~~

15 ~~8271. (a) It is the intent of the Legislature that the~~  
16 ~~State Board of Equalization, its staff, and the Attorney~~  
17 ~~General pursue settlements as authorized under this~~  
18 ~~section with respect to civil tax matters in dispute that are~~  
19 ~~subject to protests, appeals, or refund claims, consistent~~  
20 ~~with a reasonable evaluation of the costs and risks~~  
21 ~~associated with litigation of these matters.~~

22 ~~(b) (1) Subject to paragraph (2), the executive~~  
23 ~~director of the board, or the chief counsel if authorized by~~  
24 ~~the executive director, may recommend to the State~~  
25 ~~Board of Equalization, itself, a settlement of any civil tax~~  
26 ~~matter in dispute.~~

27 ~~(2) No recommendation of settlement shall be~~  
28 ~~submitted to the board unless and until that~~  
29 ~~recommendation has been submitted by the executive~~  
30 ~~director or chief counsel to the Attorney General. Within~~  
31 ~~30 days of receiving that recommendation, the Attorney~~  
32 ~~General shall review the recommendation and advise in~~  
33 ~~writing, the executive director or chief counsel of the~~  
34 ~~board of his or her conclusions as to whether the~~  
35 ~~recommendation is reasonable from an overall~~  
36 ~~perspective. The executive director or chief counsel shall,~~  
37 ~~with each recommendation of settlement submitted to~~  
38 ~~the board, also submit the Attorney General's written~~  
39 ~~conclusions obtained pursuant to this paragraph.~~

~~(c) Whenever a reduction of tax in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:~~

~~(1) The name or names of the taxpayers who are parties to the settlement.~~

~~(2) The total amount in dispute.~~

~~(3) The amount agreed to pursuant to the settlement.~~

~~(4) A summary of the reasons why the settlement is in the best interests of the State of California.~~

~~(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.~~

~~The public record shall not include any information that relates to any trade secret, patent process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.~~

~~The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (d).~~

~~(d) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or is approved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.~~

~~(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the~~

~~1 initial submission, at the discretion of the executive  
2 director or chief counsel.~~

~~3 (e) All settlements entered into pursuant to this  
4 section shall be final and not subject to appeal, except  
5 upon a showing of fraud or misrepresentation with  
6 respect to a material fact.~~

~~7 (f) Any proceedings undertaken by the board itself  
8 pursuant to a settlement as described in this section shall  
9 be conducted in a closed session or sessions. Except as  
10 provided in subdivision (e), any settlement entered into  
11 pursuant to this section shall constitute confidential tax  
12 information.~~

~~13 (g) This section shall apply only to civil tax matters in  
14 dispute on or after the effective date of the act adding this  
15 subdivision.~~

~~16 (h) The Legislature finds that it is essential for fiscal  
17 purposes that the settlement program authorized by this  
18 section be expeditiously implemented. Accordingly,  
19 Chapter 3.5 (commencing with Section 11340) of Part 1  
20 of Division 3 of Title 2 of the Government Code, shall not  
21 apply to any determination, rule, notice, or guideline  
22 established or issued by the board in implementing and  
23 administering the settlement program authorized by this  
24 section.~~

~~25 SEC. 53. Section 8272 of the Revenue and Taxation  
26 Code is amended to read:~~

~~27 8272. (a) The board shall release any levy or notice to  
28 withhold issued pursuant to this part on any property in  
29 the event the expense of the sale process exceeds the  
30 liability for which the levy is made.~~

~~31 (b) The board shall not sell any seized property until  
32 it has first notified the taxpayer in writing of the  
33 exemptions from levy under Chapter 4 (commencing  
34 with Section 703.010) of Division 2 of Title 9 of Part 2 of  
35 the Code of Civil Procedure.~~

~~36 (c) This section shall not apply to the seizure of any  
37 property as a result of a jeopardy assessment.~~

~~38 (d) The Taxpayer's Rights Advocate may order the  
39 release of any levy or notice to withhold issued pursuant  
40 to this part or, within 90 days from the receipt of funds~~

1 ~~pursuant to a levy or notice to withhold, order the return~~  
2 ~~of any amount up to one thousand five hundred dollars~~  
3 ~~(\$1,500) of moneys received, upon his or her finding that~~  
4 ~~the levy or notice to withhold threatens the health or~~  
5 ~~welfare of the taxpayer or his or her spouse and~~  
6 ~~dependents or family.~~

7 ~~SEC. 54. Section 8351 of the Revenue and Taxation~~  
8 ~~Code is amended to read:~~

9 ~~8351. The board shall transmit all money received by~~  
10 ~~it under this part, except the amounts of overpayment of~~  
11 ~~the fees required in Section 7509, to the State Treasurer~~  
12 ~~who shall deposit it in the State Treasury and credit it to~~  
13 ~~the Motor Vehicle Fuel Fund, which is continued in~~  
14 ~~existence as the Motor Vehicle Fuel Account in the~~  
15 ~~Transportation Tax Fund, which fund is hereby created.~~  
16 ~~The board shall at the same time furnish copies of the~~  
17 ~~schedules covering the transmittals to the Controller.~~

18 ~~Any reference in any law or regulation to the Motor~~  
19 ~~Vehicle Fuel Fund shall be deemed to refer to the Motor~~  
20 ~~Vehicle Fuel Account in the Transportation Tax Fund.~~

21 ~~SEC. 55.~~

22 ~~SECTION 1. Section 7402 of the Revenue and~~  
23 ~~Taxation Code is repealed.~~

24 ~~7402. In support of any exemption from license taxes~~  
25 ~~claimed under this chapter on account of the exportation~~  
26 ~~of motor vehicle fuel, every distributor shall execute and~~  
27 ~~file with the board an export certificate in such form as~~  
28 ~~shall be prescribed by the board. The certificate shall be~~  
29 ~~made under penalty of perjury by a person having~~  
30 ~~knowledge of the fact of the exportation of the fuel from~~  
31 ~~the State.~~

32 ~~SEC. 2. Section 7403 of the Revenue and Taxation~~  
33 ~~Code is repealed.~~

34 ~~7403. All export certificates required to be filed with~~  
35 ~~the board under Section 7402 shall be completed and be~~  
36 ~~filed with the board within three months after the close~~  
37 ~~of the calendar month in which the fuel is exported.~~  
38 ~~Failure to file the certificate within the time required~~  
39 ~~shall not preclude the distributor from filing a claim for~~  
40 ~~refund under Article 2 (commencing at Section 8126);~~

~~Chapter 7, of this part with respect to the tax paid by the distributor on motor vehicle fuel which has been exported.~~

*SEC. 3. Section 7404 of the Revenue and Taxation Code is repealed.*

~~7404. The board may demand of any distributor such additional data as it deems necessary to support any export certificate. Failure to supply the data constitutes a waiver of all right to the export exemption.~~

*SEC. 4. Section 7407 of the Revenue and Taxation Code is repealed.*

~~7407. The board may extend for good cause for not to exceed six months the time for filing certificates of export as fixed in Section 7403. The extension may be granted at any time; provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.~~

*SEC. 5. Section 8102 of the Revenue and Taxation Code is amended to read:*

8102. (a) The claimant of a refund shall present to the Controller a claim supported by the original invoice showing the purchase. The claim shall state the total amount of the fuel purchased by the claimant and the manner and the equipment in which the claimant has used the fuel. *The claim shall state the total amount of motor vehicle fuel covered by the claim and if the motor vehicle fuel was exported, a statement that the claimant has proof of exportation. The claim shall state that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim for refund.* The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made under the penalties of perjury. *If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.*

(b) Each claim for refund under this section shall be made on a form prescribed by the Controller and shall be filed for a calendar year, except for claims relating to exportation of fuel. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to any motor vehicle fuel used, sold, or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the Controller may require the filing of claims for refund for other than yearly periods. Export claims may be filed at any time.

SEC. 6. Section 8103 of the Revenue and Taxation Code is amended to read:

8103. The Controller, upon the presentation of the claim and the invoice, shall cause to be paid to the claimant from the license taxes collected under this part an amount equal to the license taxes collected on the motor vehicle fuel in respect to which the refund is claimed. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

SEC. 7. Section 8105 of the Revenue and Taxation Code is amended to read:

~~8105. All applications for refund under Section 8101 based upon exportation of motor vehicle fuel from this state shall be filed with the Controller within the later of three months after the close of the calendar month in which the fuel is exported or 13 months from the date of the purchase of the fuel. All other applications for refund provided under this article, except where an extension of time has been granted, shall be filed within 13 months three years from the date of the purchase of the motor vehicle fuel. Any application filed after the time prescribed shall not be considered for any purpose by the Controller, the Treasurer, or the state.~~

1 SEC. 8. Section 8108 is added to the Revenue and  
2 Taxation Code, to read:

3 8108. Interest shall be paid upon any refund of tax at  
4 the modified adjusted rate per month established  
5 pursuant to Section 6591.5 from the 26th day of the  
6 calendar month following the date that a properly  
7 completed claim for refund was received by the  
8 Controller on any claim that has not been paid within 20  
9 calendar days of receipt. The interest shall be paid to the  
10 25th day of the calendar month following the date upon  
11 which the claim is approved by the Controller. No  
12 interest shall be granted on credits taken on tax returns.

13 SEC. 9. Section 8109 is added to the Revenue and  
14 Taxation Code, to read:

15 8109. (a) A refund filed pursuant to subdivision (b)  
16 of Section 8101 shall be paid to the claimant within 20  
17 calendar days of the receipt of a claim for refund by the  
18 Controller.

19 (b) Notwithstanding subdivision (a), the claim for  
20 refund shall be submitted on a properly completed form  
21 or in substantially similar format, as prescribed by the  
22 Controller.

23 SEC. 10. Section 60041 of the Revenue and Taxation  
24 Code is amended to read:

25 60041. "Train operator" includes any person that  
26 owns, operates, or controls a diesel-powered train and is  
27 licensed as a railroad by the ~~the Interstate Commerce~~  
28 ~~Commission~~ a state or federal agency.

29 SEC. 11. Section 60201.2 of the Revenue and Taxation  
30 Code is amended to read:

31 60201.2. A supplier who sells taxable diesel fuel shall  
32 collect from the purchaser the diesel fuel tax imposed  
33 under Section 60050. At the election of the purchaser, the  
34 payment of the diesel fuel tax owed on every gallon of  
35 diesel fuel purchased from a supplier shall be remitted to  
36 the supplier on terms agreed upon between the  
37 purchaser and the supplier or on or before five working  
38 days before the last day of the calendar month following  
39 the monthly period to which it relates. This election shall  
40 be subject to a condition that the purchaser's remittances



1 of all amounts of tax due to the seller shall be paid by  
2 electronic funds transfer. The purchaser's election may  
3 be terminated by the seller if the purchaser does not  
4 make timely payments to the seller as required by this  
5 section. This section shall not apply where the purchaser  
6 is required by a supplier to pay cash or cash equivalent for  
7 diesel fuel purchases.

8 ~~SEC. 56.~~

9 *SEC. 12.* Section 60201.3 of the Revenue and Taxation  
10 Code is amended to read:

11 60201.3. (a) A supplier is relieved from liability for  
12 diesel fuel tax insofar as the sales of the diesel fuel are  
13 represented by accounts which have been found  
14 worthless and charged-off for income tax purposes. If the  
15 supplier has previously paid the amount of the tax, he or  
16 she may, under the rules and regulations prescribed by  
17 the board, take a credit in that amount. If those accounts  
18 are thereafter in whole or in part collected by the  
19 supplier, the gallons of diesel fuel represented by the  
20 amounts collected shall be included in the first return  
21 filed after that collection and the amount of the tax  
22 thereon shall be paid with the return. The board may, at  
23 its option, require the supplier to submit periodic reports  
24 listing accounts delinquent for a 90-day period or more.

25 (b) Any customer of a supplier who has failed to pay  
26 for diesel fuel purchased and for which the supplier has  
27 been allowed a credit under subdivision (a) is liable to the  
28 state for the diesel fuel tax as an unlicensed supplier and  
29 the tax, applicable penalties, and interest become  
30 immediately due and payable under the unlicensed  
31 persons provisions contained in Article 6 (commencing  
32 with Section 60360) of Chapter 6.

33 ~~(c) An ultimate vendor is relieved from liability for~~  
34 ~~diesel fuel tax insofar as the sale of the diesel fuel is~~  
35 ~~represented by accounts which have been found~~  
36 ~~worthless and charged-off for income tax purposes. If the~~  
37 ~~ultimate vendor has previously paid the amount of the~~  
38 ~~tax, he or she may, under the rules and regulations~~  
39 ~~prescribed by the board, seek a refund from the board in~~  
40 ~~that amount by submitting documentation specified in~~

~~subdivision (b) of Section 60501. If those accounts are thereafter in whole or in part collected by the ultimate vendor, the gallons of diesel fuel represented by the amounts collected shall be reported on forms prescribed by the board after that collection and the amount of the tax thereon shall be paid with the return. The board may, at its option, require the ultimate vendor to submit periodic reports listing accounts delinquent for a 90-day period or more.~~

~~(d) Any customer of an ultimate vendor who has failed to pay for diesel fuel purchased and for which the ultimate vendor has been allowed a refund under subdivision (c) is liable to the state for the diesel fuel tax as an unlicensed person and the tax, applicable penalties, and interest become immediately due and payable under the unlicensed person's provisions contained in Article 6 (commencing with Section 60360) of Chapter 6.~~

~~SEC. 57. Section 60501 of the Revenue and Taxation Code is amended to read:~~

~~60501. Persons who have paid a tax for diesel fuel used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.~~

~~(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:~~

~~(1) Tax was imposed on the diesel fuel to which the claim relates.~~

~~(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state.~~

~~(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice showing the purchase.~~

~~(4) The diesel fuel was any of the following:~~

~~(A) Used for purposes other than operating motor vehicles upon the public highways of the state.~~

~~(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle~~

1 ~~is not deemed to be exported from this state unless the~~  
2 ~~diesel fuel becomes subject to tax as an import under the~~  
3 ~~laws of the destination state.~~

4 ~~(C) Used in any construction equipment that is~~  
5 ~~exempt from vehicle registration pursuant to the Vehicle~~  
6 ~~Code, while operated within the confines and limits of a~~  
7 ~~construction project.~~

8 ~~(D) Used in the operation of a motor vehicle on any~~  
9 ~~highway that is under the jurisdiction of the United States~~  
10 ~~Department of Agriculture and with respect to the use of~~  
11 ~~the highway the claimant pays, or contributes to, the cost~~  
12 ~~of construction or maintenance thereof pursuant to an~~  
13 ~~agreement with, or permission of, the United States~~  
14 ~~Department of Agriculture.~~

15 ~~(E) Used in any motor vehicle owned by any county,~~  
16 ~~city and county, city, district, or other political subdivision~~  
17 ~~or public agency when operated by it over any highway~~  
18 ~~constructed and maintained by the United States or any~~  
19 ~~department or agency thereof within a military~~  
20 ~~reservation in this state. If the motor vehicle is operated~~  
21 ~~both over the highway and over a public highway outside~~  
22 ~~the military reservation in a continuous trip the tax shall~~  
23 ~~not be refunded as to that portion of the diesel fuel used~~  
24 ~~to operate the vehicle over the public highway outside~~  
25 ~~the military reservation.~~

26 ~~Nothing contained in this section shall be construed as~~  
27 ~~a refund of the tax for the use of diesel fuel in any motor~~  
28 ~~vehicle operated upon a public highway within a military~~  
29 ~~reservation, which highway is constructed or maintained~~  
30 ~~by this state or any political subdivision thereof.~~

31 ~~As used in this section, “military reservation” includes~~  
32 ~~any establishment of the United States government or~~  
33 ~~any agency thereof used by the armed forces of the~~  
34 ~~United States for military, air, or naval operations,~~  
35 ~~including research projects.~~

36 ~~(F) Sold by a supplier to any consulate officer or~~  
37 ~~consulate employee under circumstances which would~~  
38 ~~have entitled the supplier to an exemption under~~  
39 ~~paragraph (6) of subdivision (a) of Section 60100 if the~~

~~1 supplier had sold the diesel fuel directly to the consulate  
2 officer or consulate employee.~~

~~3 (G) Any person who sells diesel fuel to the United  
4 States and its agencies and instrumentalities under  
5 circumstances that would have entitled him or her to an  
6 exemption from the payment of diesel fuel tax under  
7 Section 60100 had he or she been the supplier of this diesel  
8 fuel.~~

~~9 (H) Any person who sells diesel fuel to a train operator  
10 for use in a diesel-powered train or for other off-highway  
11 use under circumstances that would have entitled him or  
12 her to an exemption from the payment of diesel fuel tax  
13 under Section 60100 had he or she been the supplier of the  
14 diesel fuel.~~

~~15 (b) Each claim for refund under this section shall  
16 contain the following information with respect to all the  
17 diesel fuel covered by the claim:~~

~~18 (1) The name, address, telephone number, and permit  
19 number of the person that sold the diesel fuel to the  
20 claimant and the date of the purchase.~~

~~21 (2) A statement by the claimant that the diesel fuel  
22 covered by the claim did not contain visible evidence of  
23 dye.~~

~~24 (3) A statement, which may appear on the invoice or  
25 similar document, by the person that sold the diesel fuel  
26 to the claimant that the diesel fuel sold did not contain  
27 visible evidence of dye.~~

~~28 (4) The total amount of diesel fuel covered by the  
29 claim.~~

~~30 (5) The use made of the diesel fuel covered by the  
31 claim described by reference to specific categories listed  
32 in paragraph (4) of subdivision (a).~~

~~33 (6) If the diesel fuel covered by the claim was  
34 exported, a statement that the claimant has the proof of  
35 exportation.~~

~~36 (e) Each claim for refund under this section shall be  
37 made on a form prescribed by the board and shall be filed  
38 for a calendar year. If, at the close of any of the first three  
39 quarters of the calendar year, more than seven hundred  
40 fifty dollars (\$750) is refundable under this section with~~

1 ~~respect to diesel fuel used or exported during that quarter~~  
2 ~~or any prior quarter during the calendar year, and for~~  
3 ~~which no other claim has been filed, a claim may be filed~~  
4 ~~for the quarterly period. To facilitate the administration~~  
5 ~~of this section, the board may require the filing of claims~~  
6 ~~for refund for other than yearly periods.~~

7 ~~SEC. 58. Section 60510 of the Revenue and Taxation~~  
8 ~~Code is amended to read:~~

9 ~~60510. Refunds shall be granted for losses in handling,~~  
10 ~~transporting, or storing diesel fuel in accordance with the~~  
11 ~~terms, conditions, and forms prescribed by the board.~~

12 ~~SEC. 59. Section 60526 is added to the Revenue and~~  
13 ~~Taxation Code, to read:~~

14 ~~60526. (a) A refund filed pursuant to this section shall~~  
15 ~~be paid to the claimant within 20 calendar days of receipt~~  
16 ~~of a claim for refund by the board.~~

17 ~~(b) Notwithstanding subdivision (a), the claim for~~  
18 ~~refund must be submitted on a properly completed form~~  
19 ~~or in substantially similar format, as prescribed by the~~  
20 ~~board.~~

21 ~~SEC. 60. This act provides for a tax levy within the~~  
22 ~~meaning of Article IV of the Constitution and shall go into~~  
23 ~~immediate effect.~~

24 ~~SEC. 13. Section 60472 of the Revenue and Taxation~~  
25 ~~Code is amended to read:~~

26 ~~60472. (a) If the purchaser of a business or stock of~~  
27 ~~goods fails to withhold the purchase price as required, he~~  
28 ~~or she becomes personally liable for the payment of the~~  
29 ~~amount required to be withheld by him or her to the~~  
30 ~~extent of the purchase price valued in money.~~

31 ~~(b) (1) Within 60 days after the latest of the dates~~  
32 ~~specified in paragraph (2), the board shall either issue the~~  
33 ~~certificate or mail notice to the purchaser at his or her~~  
34 ~~address as it appears on the records of the board of the~~  
35 ~~amount that is required to be paid as a condition of issuing~~  
36 ~~the certificate.~~

37 ~~(2) For purposes of paragraph (1), the latest of the~~  
38 ~~following dates shall apply:~~

39 ~~(A) The date the board receives a written request~~  
40 ~~from the purchaser for a certificate.~~

1 (B) The date the former owner's records are made  
2 available for audit.

3 (c) Failure of the board to mail the notice referred to  
4 in subdivision (b) shall release the purchaser from any  
5 further obligation to withhold *from* the purchase price  
6 under this article. The ~~time within last day upon~~ which  
7 the obligation of the successor may be enforced shall  
8 ~~begin to run at the time the person sells out his or her~~  
9 ~~business or stock of goods or at the time that the~~  
10 ~~determination against the person becomes final,~~  
11 ~~whichever event occurs later be no later than three years~~  
12 ~~after the date the board is notified of the purchase of the~~  
13 ~~business or stock of goods.~~

14 SEC. 14. Section 60501 of the Revenue and Taxation  
15 Code is amended to read:

16 60501. Persons who have paid a tax for diesel fuel used  
17 in a nontaxable use, other than on a farm for farming  
18 purposes or in an exempt bus operation, shall, except as  
19 otherwise provided in this part, be reimbursed and repaid  
20 the amount of the tax.

21 (a) A claim for refund with respect to diesel fuel is  
22 allowed under this section only if all of the following  
23 apply:

24 (1) Tax was imposed on the diesel fuel to which the  
25 claim relates.

26 (2) The claimant bought or produced the diesel fuel  
27 and did not sell or resell it in this state.

28 (3) The claimant has filed a timely claim for refund  
29 that contains the information required under subdivision  
30 (b) and the claim is supported by the original invoice  
31 showing the purchase. *If no original invoice was created,*  
32 *electronic invoicing shall be accepted as reflected by a*  
33 *computerized facsimile when accompanied by an*  
34 *original copy of the bill of lading or fuel manifest that can*  
35 *be directly tied to the electronic invoice.*

36 (4) The diesel fuel was any of the following:

37 (A) Used for purposes other than operating motor  
38 vehicles upon the public highways of the state.

39 (B) Exported for use outside of this state. Diesel fuel  
40 carried from this state in the fuel tank of a motor vehicle

1 is not deemed to be exported from this state unless the  
2 diesel fuel becomes subject to tax as an import under the  
3 laws of the destination state.

4 (C) Used in any construction equipment that is  
5 exempt from vehicle registration pursuant to the Vehicle  
6 Code, while operated within the confines and limits of a  
7 construction project.

8 (D) Used in the operation of a motor vehicle on any  
9 highway that is under the jurisdiction of the United States  
10 Department of Agriculture and with respect to the use of  
11 the highway the claimant pays, or contributes to, the cost  
12 of construction or maintenance thereof pursuant to an  
13 agreement with, or permission of, the United States  
14 Department of Agriculture.

15 (E) Used in any motor vehicle owned by any county,  
16 city and county, city, district, or other political subdivision  
17 or public agency when operated by it over any highway  
18 constructed and maintained by the United States or any  
19 department or agency thereof within a military  
20 reservation in this state. If the motor vehicle is operated  
21 both over the highway and over a public highway outside  
22 the military reservation in a continuous trip the tax shall  
23 not be refunded as to that portion of the diesel fuel used  
24 to operate the vehicle over the public highway outside  
25 the military reservation.

26 Nothing contained in this section shall be construed as  
27 a refund of the tax for the use of diesel fuel in any motor  
28 vehicle operated upon a public highway within a military  
29 reservation, which highway is constructed or maintained  
30 by this state or any political subdivision thereof.

31 As used in this section, "military reservation" includes  
32 any establishment of the United States government or  
33 any agency thereof used by the armed forces of the  
34 United States for military, air, or naval operations,  
35 including research projects.

36 (F) Sold by a supplier to any consulate officer or  
37 consulate employee under circumstances which would  
38 have entitled the supplier to an exemption under  
39 paragraph (6) of subdivision (a) of Section 60100 if the

1 supplier had sold the diesel fuel directly to the consulate  
2 officer or consulate employee.

3 ~~(G) Any person who sells diesel fuel—Lost in the~~  
4 ~~ordinary course of handling, transportation, or storage.~~

5 *(H) Sold by a person to the United States and its*  
6 *agencies and instrumentalities under circumstances that*  
7 *would have entitled ~~him or her~~ that person to an*  
8 *exemption from the payment of diesel fuel tax under*  
9 *Section 60100 had ~~he or she~~ that person been the supplier*  
10 *of this diesel fuel.*

11 *(I) Sold by a person to a train operator for use in a*  
12 *diesel-powered train or for other off-highway use under*  
13 *circumstances that would have entitled that person to an*  
14 *exemption from the payment of diesel fuel tax under*  
15 *Section 60100 had that person been the supplier of this*  
16 *diesel fuel.*

17 (b) Each claim for refund under this section shall  
18 contain the following information with respect to all the  
19 diesel fuel covered by the claim:

20 (1) The name, address, telephone number, and permit  
21 number of the person that sold the diesel fuel to the  
22 claimant and the date of the purchase.

23 (2) A statement by the claimant that the diesel fuel  
24 covered by the claim did not contain visible evidence of  
25 dye.

26 (3) A statement, which may appear on the invoice or  
27 similar document, by the person that sold the diesel fuel  
28 to the claimant that the diesel fuel sold did not contain  
29 visible evidence of dye.

30 (4) The total amount of diesel fuel covered by the  
31 claim.

32 (5) The use made of the diesel fuel covered by the  
33 claim described by reference to specific categories listed  
34 in paragraph (4) of subdivision (a).

35 (6) If the diesel fuel covered by the claim was  
36 exported, a statement that the claimant has the proof of  
37 exportation.

38 (c) Each claim for refund under this section shall be  
39 made on a form prescribed by the board and shall be filed  
40 for a calendar year. If, at the close of any of the first three



1 quarters of the calendar year, more than seven hundred  
2 fifty dollars (\$750) is refundable under this section with  
3 respect to diesel fuel used or exported during that quarter  
4 or any prior quarter during the calendar year, and for  
5 which no other claim has been filed, a claim may be filed  
6 for the quarterly period. To facilitate the administration  
7 of this section, the board may require the filing of claims  
8 for refund for other than yearly periods.

9 *SEC. 15. Section 60502 of the Revenue and Taxation*  
10 *Code is amended to read:*

11 60502. (a) Any ultimate vendor who has paid a tax on  
12 diesel fuel sold to an ultimate purchaser for use on a farm  
13 for farming purposes or use in an exempt bus operation  
14 shall, except as otherwise provided in this part, be  
15 reimbursed and repaid the amount of the tax.

16 (b) A claim for refund with respect to diesel fuel is  
17 allowed under this section only if all of the following  
18 apply:

19 (1) Tax was imposed on the diesel fuel to which the  
20 claim relates.

21 (2) The claimant sold the diesel fuel to the ultimate  
22 purchaser for use on a farm for farming purposes or for  
23 use in an exempt bus operation.

24 (3) The claimant is a registered ultimate vendor.

25 (4) The claimant has filed a timely claim for refund  
26 that contains the information required under subdivision  
27 (c) and the claim is supported by the original invoice  
28 showing the purchase. *If no original invoice was created,*  
29 *electronic invoicing shall be accepted as reflected by a*  
30 *computerized facsimile when accompanied by an*  
31 *original copy of the bill of lading or fuel manifest that can*  
32 *be directly tied to the electronic invoice.*

33 (c) Each claim for refund under this section shall  
34 contain the following information with respect to all the  
35 diesel fuel covered by the claim:

36 (1) The claimant's permit number.

37 (2) The name, address, telephone number, and permit  
38 number of each person that sold the diesel fuel to the  
39 claimant and the date of the purchase.

1 (3) The name, address, telephone number, and  
2 federal taxpayer identification number of each farmer or  
3 the permit number of each exempt bus operator that  
4 bought the diesel fuel from the claimant and the number  
5 of gallons that the claimant sold to each.

6 (4) A statement that the diesel fuel covered by the  
7 claim did not contain visible evidence of dye.

8 (5) The total amount of diesel fuel covered by the  
9 claim.

10 (6) A statement that the claimant has not included the  
11 amount of the tax in its sales price of the diesel fuel and  
12 has not collected the amount of tax from its buyer.

13 (7) A statement that the claimant has in its possession  
14 an unexpired exemption certificate described in Section  
15 60503 and the claimant has no reason to believe any  
16 information in the certificate is false.

17 (8) *A statement that the amounts claimed have not*  
18 *been previously refunded to the claimant and that there*  
19 *are no other claims outstanding for the amounts included*  
20 *in the current claim.*

21 (d) Each claim for refund under this section shall be  
22 made on a form prescribed by the board and shall be for  
23 an amount of not less than two hundred dollars (\$200) and  
24 for a period of not less than one week.

25 *SEC. 16. Section 60505 of the Revenue and Taxation*  
26 *Code is amended to read:*

27 60505. The board, upon the presentation of the claim  
28 and the invoice, shall cause to be paid to the claimant  
29 from the taxes collected under this part an amount equal  
30 to the taxes collected on the diesel fuel with respect to  
31 which the refund is claimed under this article. *If no*  
32 *original invoice was created, electronic invoicing shall be*  
33 *accepted as reflected by a computerized facsimile when*  
34 *accompanied by an original copy of the bill of lading or*  
35 *fuel manifest that can be directly tied to the electronic*  
36 *invoice.*

37 *SEC. 17. Section 60510 of the Revenue and Taxation*  
38 *Code is repealed.*

39 ~~60510. No refund shall be granted for losses in~~  
40 ~~handling, transporting, or storing diesel fuel.~~

1    *SEC. 18. Section 60511 of the Revenue and Taxation*  
2    *Code is amended to read:*

3    60511. Interest shall be paid upon any refund of tax at  
4    the modified adjusted rate per month established  
5    pursuant to Section 6591.5 from the ~~last~~ *first* day of the  
6    *calendar* month following the day ~~the diesel fuel was~~  
7    ~~purchased~~ *a properly completed claim for refund was*  
8    *received by the board on any claim that has not been paid*  
9    *within 20 calendar days of the receipt of a properly*  
10   *completed claim form by the board.*

11   The interest shall be paid to the last day of the month  
12   following the date upon which the claim is approved by  
13   the board.

14   No interest shall be granted on credits taken on tax  
15   returns.

